

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHEASTERN DIVISION

United States of America,)	
)	
Plaintiff,)	
)	Criminal No. 3:02-cr-47-01
vs.)	
)	
Michael Gerald Gamboa)	
)	
Defendant.)	

O R D E R

Before the Court are twelve different motions filed by Defendant Michael Gerald Gamboa (docs. #435-#446), including a motion under 28 U.S.C. §2255 (doc. #436). In February 2007, Gamboa filed a notice of appeal (doc. #428), appealing the Court's order dated January 12, 2007 (doc. #425).

Generally, the filing of a notice of appeal is a jurisdictional event, divesting the district court of jurisdiction in the case. See United States v. Curry, 328 F.3d 970, 972 (8th Cir. 2003) (holding that a frivolous double jeopardy challenge does not divest the district court of jurisdiction, while a "colorable" challenge does). The appeal in Gamboa's case is still pending. Rule 4(b) of the Rules Governing Section 2255 Proceedings for Section 2255 Proceedings requires the Court to conduct a preliminary review of the merits of the motion.

While a § 2255 is technically a separate civil lawsuit, it is clearly intertwined with the underlying criminal case.

Because the Eighth Circuit's ruling on appeal may effect Gamboa's 2255 motion, the Court finds it should not conduct this preliminary review of Gamboa's § 2255 motion until the Circuit has addressed his appeal. The Court will promptly review the motion after the Eighth Circuit announces its decision.

Many of the motions filed with the § 2255 motion involve matters the Court addresses after its preliminary review (docs. #438, #440-#446). Three motions are collateral to the § 2255 motion review and strictly procedural to the district court (docs #435, #437, #439). Therefore, the Court may address those.

Motion to File Affidavit Under Seal

Gamboa first asks this Court to allow the affidavit of Rolando Rios Gamboa be filed under seal because it may contain privileged information. The Court agrees the information may be privileged. Furthermore, Rolando Rios Gamboa's testimony should be preserved. Therefore, the Motion for Leave to File Under Seal the Affidavit of Rolando Rios Gamboa (doc. #435) is **GRANTED**.

Motion to Proceed Without Prepayment of Fees

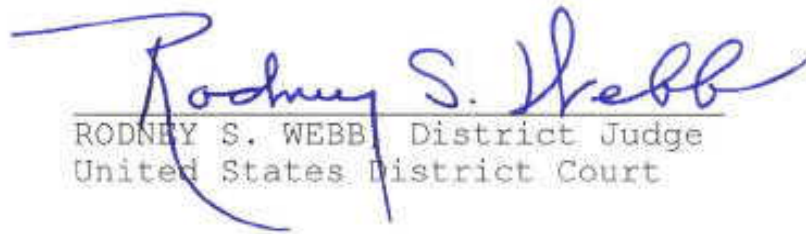
Gamboa has moved to proceed without the prepayment of fees (doc. #437). The United States District Court for the District of North Dakota does not require a filing fee for motions under 28 U.S.C. § 2255. The Court will address other funding concerns that may arise after the Court's preliminary review at that time. This motion is **DENIED AS MOOT**.

Motion for Extension of Page Limitation

Finally, Gamboa asks the Court for permission to file a brief in excess of the page limitation of Local Rule 7.2. The Court agrees this case is complicated, and Gamboa should be allowed to fully address the issues he believes are present. This motion is **GRANTED**.

IT IS SO ORDERED.

Dated this 20th day of November, 2007.



RODNEY S. WEBB District Judge
United States District Court